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UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC

Issued by the Department of Transportation on April 29, 2002

NOTICE OF ACTION TAKEN --DOCKET OST-2002-11985 - 7

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Application of Atlas Air, Inc. filed 4/12/02 for:

XX Waiver of the dormancy condition applicable to certain of its US-Brazil all-cargo frequencies.

Atlas requests a further waiver of the 90-day dormancy condition applicable to five (5) of its ten (10) U.S.-Brazil all-cargo frequencies. Atlas states that the Department granted all U.S. air carriers holding limited-entry international route authority a waiver of applicable dormancy conditions through March 31, 2002; and that Atlas subsequently sought a waiver through April 30, 2002, which the Department granted on March 29, 2002. Atlas now states that it will not be in a position to use all ten frequencies by April 30 and that a further dormancy waiver for a portion of its frequencies is required. In support of its application, Atlas states that it continues to face sluggish demand for U.S.-Brazil cargo lift; that the impact of September 11 is still being felt on the industry; and that Atlas has recently encountered third-country resistance to flight routings that combine its Brazil services with other contemplated Latin America services.¹ In view of the circumstances presented, Atlas requests a further waiver applicable to five frequencies through October 15 or until 120 days after issuance of the Department's final order in Docket OST-2001-10239, whichever occurs first.

United Parcel Service (UPS) filed an answer in opposition to the request for further waiver, arguing that Atlas has given no indication when it intends to commence service using its five unused frequencies and that the public interest would be better served by allowing these frequencies to revert to the Department in order to be immediately available to any carrier upon a strong showing for the need for, and a present intent to use, the frequencies. UPS states that it recognizes that the Department has granted waivers from dormancy requirements following the events of September 11. However, UPS maintains that this request is distinguishable in that Atlas seeks a waiver from the dormancy provision for frequencies it has never operated.

Atlas filed a reply, reiterating its reasons for the waiver.² Atlas maintains that UPS has neither disputed the legitimacy of those reasons nor challenged the Department's policy of giving sympathetic consideration to individual requests for dormancy waivers in the post-September 11 environment. Atlas states that it requests the dormancy waiver through October 15, 2002, in expectation of being able to use 10 frequencies by that date, and that the public interest would be poorly served by frequency reversion when no other carrier has stated it "needs" or "presently intends" to use the frequencies. In addition, Atlas notes that the Department, in granting dormancy waivers, has stated that should another carrier seek to use the frequencies at issue, the Department reserved the right to reexamine whether the waivers

¹ Atlas also notes the pending Joint Application of Atlas Air Worldwide Holdings in Docket OST-2001-10239, in which the Department has tentatively found in Order 2001-12-15 that transfer of Polar's Brazil designation and frequencies should be disapproved. Atlas states that: "if the Department finds that Polar should lose its Brazil designation and frequencies, it will be in Atlas Holdings' corporate interest for Atlas to adjust service in an attempt to accommodate Polar's Brazil traffic."

² Atlas' reply was accompanied by a motion for leave to file an otherwise unauthorized document. In the interest of having a complete record, we are granting the motion.

continue to be in the public interest, and Atlas notes the Department will probably include the same statement should it grant this request.

Applicant rep: Russell E. Pommer, 202-354-4843

DOT analyst: Linda Senese 202-366-2367

DISPOSITION

XX Granted. (See Remarks below).

The above action was effective when taken: **April 29, 2002**, through **October 15, 2002**, or 120 days after issuance of a final order in Docket OST-2001-10239, whichever occurs earlier.³

Action taken by: Paul L. Gretch, Director
Office of International Aviation

Except to the extent exempted or waived, this authority is subject to the terms, conditions, limitations indicated:

XX Holder's certificate of public convenience and necessity

Remarks: When we granted Atlas a dormancy waiver on March 29, 2002, through April 30, 2002, we stated that we were granting the request in the public interest and that any future request would be considered in light of the specific arguments offered in support of the request and any comments filed in response. We have considered UPS' concerns regarding the availability of the frequencies to other carriers should a need arise. However, neither UPS nor any other carrier has demonstrated such a need at this time, whereas Atlas has shown reasons for a further waiver for 5 of its all-cargo frequencies. Based on the circumstances presented, we believe that grant of the waiver is in the public interest. We emphasize, however, that while we have granted Atlas' request here, there should be no expectation that an additional request will similarly be granted. As we have previously done, we reserve the right to reexamine whether grant of this waiver continues to be in the public interest should another carrier seek to use the frequencies at issue. Any future request to extend the dormancy waiver for these frequencies at issue here will have to be considered in light of the specific arguments offered and responses thereto.

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) our action was consistent with Department policy; and (2) grant of the authority was consistent with the public interest. To the extent not granted, we denied all requests in the referenced Docket. We may amend, modify, or revoke the action taken in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR § 385.30, may file their petitions within seven (7) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

An electronic version of this document is available on the World Wide Web at:
http://dms.dot.gov/reports/reports_aviation.asp

³ Atlas' waiver from the dormancy condition is effective through October 15, 2002, or 120 days after issuance of a final order in Docket OST-2001-10239, whichever occurs earlier. The 90-day dormancy period will begin on the date Atlas begins service. As to any frequency with which Atlas does not begin service by either October 16, 2002 or the 121st day after issuance of a final order in Docket OST-2001-10239, whichever occurs earlier, its allocation with respect to that frequency will expire automatically.